

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BILLIE RUTH HILTON

Claimant

VS.

**WICHITA COCA-COLA BOTTLING COMPANY
and COCA-COLA ENTERPRISES, INC.**

Respondent

AND

**AMERICAN MOTORIST INSURANCE COMPANY
and CONSTITUTION STATE SERVICES COMPANY)**

Insurance Carriers

Docket No. 198,861

ORDER

Respondent, Coca-Cola Enterprises, Inc., and its insurance carrier, Constitution State Services Company, appeal from a Preliminary Order rendered by Administrative Law Judge Nelsonna Potts Barnes on June 22, 1995.

ISSUES

Respondent contends claimant failed to give timely notice as required by K.S.A. 44-520 and that claimant's injury did not arise out of and in the course of employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes:

(1) Issues raised by respondent in its appeal are ones subject to review in an appeal from a preliminary order. K.S.A. 44-551, as amended by S.B. 59 (1995), and K.S.A. 44-534a.

(2) The Appeals Board finds claimant did suffer accidental injury arising out of and in the course of her employment with Coca-Cola Enterprises, Inc. The parties do not dispute that claimant has developed carpal tunnel syndrome from her work as a 10-key operator. The dispute relates to whether the injury arose in the course of her employment for Coca-Cola Enterprises. Claimant worked as a 10-key operator for respondent, Wichita Coca-Cola Bottling, until respondent, Coca-Cola Enterprises, purchased the assets of the Wichita Coca-Cola Bottling Company on January 28, 1995. Claimant was an employee of respondent, Coca-Cola Enterprises, for nine (9) days ending February 10, 1995 when she was terminated as a part of the business reorganization by Coca-Cola Enterprises, Inc.

The Administrative Law Judge found Coca-Cola Enterprises, Inc. responsible for temporary total medical benefits relating to claimant's carpal tunnel condition. As indicated in Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), the date of accident is to be the date claimant left work due to symptoms resulting from the carpal tunnel condition. Respondent argues that the Berry decision does not apply here because claimant left work as a result of a layoff, not symptoms from bilateral carpal tunnel syndrome.

The Appeals Board concludes the Berry decision does apply here to determine date of accident. The Berry decision does refer several times to the date claimant left work due to the pain and disability resulting from the carpal tunnel syndrome. The last date worked was used there as the date of accident. The case appears more properly construed as suggesting that a claimant who continues to perform the same duties will be presumed to have continuing development of the carpal tunnel syndrome so that the last date worked in that job will be considered the date of accident. As applied here, claimant continued to perform duties as a 10-key operator. The record reflects she no longer worked for Coca-Cola Enterprises the long days as she had worked for Wichita Coca-Cola Bottling Company. However, the record suggests the duties were the same. On the basis of the Berry decision, the Appeals Board finds the date of accident was the last date claimant worked for Coca-Cola Enterprises, Inc.

(3) The Appeals Board finds there was just cause for failure to give notice within ten (10) days to Coca-Cola Enterprises, Inc. The evidence establishes that claimant gave notice of her carpal tunnel symptoms to Wichita Coca-Cola Bottling Company. Although she did not give similar notice to Coca-Cola Enterprises, Inc., the Appeals Board finds that the brief period of employment and the fact that she had given notice to Wichita Coca-Cola Bottling Company before the sale is just cause for the brief delay, sixteen (16) days from the last date worked, in giving notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 22, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Andrew E. Busch, Wichita, Kansas
 Vincent A. Burnett, Wichita, Kansas
 William L. Townsley III, Wichita, Kansas
 Nelsonna Potts Barnes, Administrative Law Judge
 Philip S. Harness, Director